IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5047 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DHANERA GROUP SEVA SAHAKARI MANDALI LTD.

Versus

KESHARBHAI RANCHHODBHAI PATEL

Appearance:

MR PK JANI for Petitioner

MR ARVIND K THAKUR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2, 4, 5, 6

MR HS MUNSHAW for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/2001

ORAL JUDGEMENT

What is challenged in this petition under Article 226 of the Constitution is the order dated 7.7.1999 passed by the State Government dismissing the petitioner's revision application under Section 155 of

the Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") by which the State Government confirmed the order dated 9.2.1999 passed by the Additional Registrar (Appeals), Cooperative Societies, Gujarat State who had in turn confirmed the order dated 24.12.1998 passed by the appeal committee of Banaskantha District Panchayat granting registration to the members of the Fatepura Seva Sahakari Mandali Ltd. at village Fatepura.

2. The case of the petitioner-society is that it is a cooperative society for extending credit facilities to farmers in the area; that it had about 400 members who are agriculturists and farmers of Dhanera and Fatepura village; that there were 11 members in the managing committee of the petitioner-society, out of whom 4 members were from village Fatepura. It is submitted that although there was no need for another cooperative society, the appeal committee of the District Panchayat granted registration to the members of Fatepura Seva Sahakari Mandali Ltd. which will aversely affect the functioning of the petitioner-society. It is also submitted that some of the members of the petitioner-society from Fatepura had borrowed monies from the petitioner-society and they are defaulters and the impugned decision has been taken to benefit such defaulters and for such extraneous considerations. It is also submitted that before passing the impugned order, the appeal committee had not given the petitioner an opportunity of being heard.

3. On the other hand, Mr Munshaw, learned counsel for the appeal committee and Ms Nandini Joshi, learned AGP for the appellate and revisional authorities have submitted that Dhanera and Fatepura are two separate villages and that people in village Fatepura had to travel to Dhanera for purchasing fertilizers, seeds and for taking credit. Looking to the convenience of the people of Fatepura, the authorities have granted registration to Fatepura Seva Sahakari Mandali Ltd. which is already registered and which has been functioning for the last more than three years. Hence, there is no justification for cancelling the orders of registration at this stage. It is further submitted that the petitioner society had admittedly been heard by the Registrar of Cooperative Societies in appeal and the State Government in revision and the petitioner-society has not been able to show any prejudice to the petitioner-society on account of registration granted to Fatepura Seva Sahakari Mandali Ltd.

4. Having heard the learned counsel for the parties, it appears to the Court that the decision of the authorities to grant registration to Fatepura Seva Sahakari Mandali Ltd. being essentially a decision in exercise of the power conferred upon the authorities for granting registration to a cooperative society is not to be ordinarily interfered with as the Court does not sit in appeal over the decision of the authorities. Looking to the circulars relied upon by the learned counsel for the petitioner, it appears that a cooperative society is required to have atleast 100 to 200 members. There are other conditions also such as the lending capacity of the society. The petitioner society had earlier 400 members before the registration was granted to the Fatepura Seva Sahakari Mandali Ltd.

In view of the above, it does not appear that the strength of the petitioner society will be reduced below 200. The finding given by the authorities that the registration granted to the Fatepura Seva Sahakari Mandali Ltd. will not have any adverse impact on the functioning of the petitioner-society is a finding of fact or in any case a finding on a mixed question of law and fact. The Court is, therefore, not inclined to interfere with the decision of the authorities to grant registration to Fatepura Seva Sahakari Mandali Ltd.

5. However, the contention urged by Mr Jani for the petitioner that some of its members from Fatepura had borrowed loans from the petitioner society and are defaulters is required to be referred to.

It is true that even if those members have ceased to be members of the petitioner society and taken up by the another society, the petitioner-society can always taken appropriate legal action before the appropriate legal forum, but in order to ensure that such defaulters do not again borrow funds from Fatepura Seva Sahakari Mandali Ltd. and do not thereby expose their assets to recovery proceedings both from the petitioner-society as well as another society, it appears to the Court that it would be in the interests of justice to direct that the Fatepura Seva Sahakari Mandali Ltd. shall not enrol those members of the petitioner society who have defaulted in repaying their loan amounts to the petitioner-society.

6. It is accordingly directed that if Fatepura Seva Sahakari Mandali Ltd. has so far not enrolled any such defaulters of the petitioner-society, the Fatepura Seva Sahakari Mandali Ltd. shall not enroll them as members

till they repay the loan amounts of petitioner society with interest. In case such defaulters are already enrolled as members of the Fatepura Seva Sahakari Mandali Ltd., the Fatepura Seva Sahakari Mandali Ltd. shall not advance any loan to such defaulters of the petitioner society till they repay all the loan amounts to the petitioner-society with interest.

The impugned orders of the appeal committee of the Registrar of Cooperative Societies and the State Government are accordingly modified to the extent that the Fatepura Seva Sahakari Mandali Ltd. shall comply with the following condition :-

If Fatepura Seva Sahakari Mandali Ltd. has so far not enrolled any defaulters of the petitioner-society, the Fatepura Seva Sahakari Mandali Ltd. shall not enroll them as members till they repay the loan amounts of petitioner society with interest. In case such defaulters are already enrolled as members of the Fatepura Seva Sahakari Mandali Ltd., the Fatepura Seva Sahakari Mandali Ltd. shall not advance any loan to such defaulters of the petitioner society till they repay all the loan amounts to the petitioner-society with interest.

7. Subject to the aforesaid observations and directions, the petition is disposed of. Rule is discharged with no order as to costs.

(M.S. Shah, J.)

sundar/-